

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
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-against- :
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JORGE BRIONES, :
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 :
Defendant. :
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No. 08 Cr. 581 (JFK)

ORDER

JOHN F. KEENAN, United States District Judge:

On October 22, 2009, Jorge Briones ("Defendant") was sentenced principally to a term of imprisonment of 156 months after pleading guilty to charges related to conspiracy to distribute cocaine, as well as distribution and possession with intent to distribute cocaine. On April 29, 2015, Defendant filed a motion for reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2) based on a retroactive amendment to the U.S. Sentencing Guidelines Manual (the "Guidelines"). The Government responded on September 17, 2015. Consistent with the Probation Department's supplemental presentence report, the parties agree that Defendant is eligible for a reduction in his sentence of imprisonment.

The Court has reviewed the submissions from both parties, as well as the Probation Department's report. At the time of sentencing, the Guidelines range applicable to Defendant was determined to be 168 to 210 months' imprisonment based on a

total offense level of 33 and criminal history category III. By comparison, had the relevant amendment been in effect at the time of initial sentencing, the parties agree that Defendant's total offense level would have been 31, with a Guidelines range of 135 to 168 months' imprisonment. Because Defendant's original sentence of 156 months' imprisonment is higher than the bottom of this amended range, he is eligible for a reduction in his sentence.

The U.S. Sentencing Commission has made clear, however, that a defendant requesting modification of a sentence under § 3582(c) may not receive a revised sentence that is below the new, amended range unless the previous departure was based on substantial assistance. See U.S.S.G. § 1B1.10(b)(2)(A)-(B); see also United States v. Erskine, 717 F.3d 131, 137-41 (2d Cir. 2013) (recognizing that section 1B1.10 prohibits reductions below the bottom of the amended range). Here, although Defendant received a below-Guidelines sentence, he was not sentenced pursuant to a government motion based on the provision of substantial assistance. Thus, Defendant is eligible for, at most, a reduction in his sentence from 156 months' imprisonment to the bottom of the amended Guidelines range of 135 to 168 months' imprisonment.

The Court must therefore decide whether a reduction in Defendant's sentence is appropriate in light of the applicable

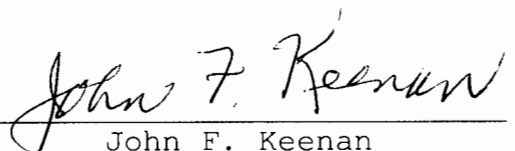
factors under 18 U.S.C. § 3553(a), as well as considerations of public safety and the Defendant's post-sentence conduct.

U.S.S.G. § 1B1.10 n.1(B); see also Dillon v. United States, 560 U.S. 817, 825 (2010) (noting that the court must decide whether to grant a reduction "in whole or in part under the particular circumstances of the case").

Here, the Government does not object to a reduction in Defendant's sentence. Neither the instant offenses nor Defendant's prior criminal conduct involved the use of violence, and the Probation Department's supplemental presentence report indicates that that the Defendant has not received any sanctions for violent or assaultive behavior while incarcerated for the instant offenses. Accordingly, having considered the record in this case and the parties' arguments, it is hereby

ORDERED that the Defendant's request for a sentencing modification pursuant to 18 U.S.C. § 3582(c)(2) is granted and that his sentence is reduced from 156 to 135 months' imprisonment.

Dated: New York, New York
March 10, 2016



John F. Keenan
United States District Judge